

DATE: April 9, 1998

SUBJECT: DISPOSITION OF CASES -- OPINIONS AND ORDERS -- VACATE,
REVERSE, REMAND -- COSTS

1. The court employs only these means in disposing of matters before it for decision: precedential opinions; nonprecedential opinions; precedential orders; nonprecedential orders; and Rule 36 judgments of affirmance without opinion.

2. The court's decisions on the merits of all cases submitted after oral argument or on the briefs, other than those disposed of under Rule 36, shall be explained in an accompanying precedential or nonprecedential opinion.

3. The court's decisions on motions, petitions and applications will be by precedential or nonprecedential orders.

4. The court's policy is that all opinions and orders shall be as short and as limited to the dispositive issue as the nature of the cases or motions will allow.

5. At the election of the authoring judge, a unanimous or majority opinion, precedential or nonprecedential, may be headed "PER CURIAM." Rule 36 judgments shall be "PER CURIAM."

6. Copies of all issued opinions and precedential orders shall be provided when issued to all judges of the court, to other participating judges, to the parties involved, and to the tribunal from which the appeal was taken, or which is affected by the order. Copies of Rule 36 judgments signed by the clerk will be provided by the clerk to the parties, the trial tribunal, and the members of the panel.

7. All dispositions made in the preceding week will be entered by the clerk on the weekly disposition sheet issued each Monday. When appropriate, the clerk may accumulate nonprecedential orders (disposing of petitions for rehearing and similar items) for periodic issuance and entry on a disposition sheet. All opinions and orders, precedential and nonprecedential, are public records of the court and shall be accessible to the public.

8. Publishers will be requested to publish periodically in tables the results in cases in which the decision was accompanied by a nonprecedential opinion or order or was a Rule 36 judgment.

9. Nonprecedential opinions and orders and Rule 36 judgments shall not be employed as precedent by this court, nor be cited as precedent by counsel, except in relation to a claim of res judicata, collateral estoppel, or law of the case, and shall carry notice to that effect.

10. The court will VACATE all or part of a judgment, order, or agency decision when it is being eliminated but not replaced with a contrary judgment or order of this court.

The court will REVERSE all or part of a judgment, order, or agency decision when it is being replaced with a contrary judgment or order of this court.

The court will REMAND only when there is something more for the trial court or agency to do, and will supply such guidance as the case may warrant.

11. Adoption of opinions of trial tribunals.

(a) Because a precedential opinion stating that this court affirms “on the basis of” an opinion of a trial tribunal might cause confusion as to what constitutes precedent in this court, that format will no longer be used in precedential opinions. It is not objectionable in nonprecedential opinions which are not citable as precedent. Except for the provisions (b) and (c) below, a

precedential opinion should say enough to supply, in itself without reference to another opinion, the basis of this court's decision.

(b) If a trial tribunal's opinion has been published, and a panel can accept all or a separable part thereof as its own opinion, the panel may state that it adopts the trial tribunal's opinion or separable part as its own. If this has been done, the panel's opinion, when circulated to the court for seven-day review, shall be accompanied by a copy of what has been adopted. The panel's precedential opinion and what has been adopted then constitutes precedent in this court.

(c) If a trial tribunal's opinion has not been published, and a panel accepts all or a separate part thereof as its own opinion in its precedential opinion, the panel will circulate for seven-day review and will publish the adopted opinion or separable part, as an appendix to or in the body of the panel's opinion, with suitable attribution.

12. Costs.

(a) When a panel affirms or reverses a judgment or order in its entirety, or dismisses an appeal, it need say nothing respecting costs, which will be assessed by the clerk automatically against the losing party. A panel that does not wish assessment of costs against the losing party will instruct that costs be assessed as the panel may deem just.

(b) When a panel's decision is other than a total affirmance or reversal (e.g., affirm-in part, reverse-in-part, vacate, remand) the panel will include in its opinion or order a direction on the award of costs.

(c) A panel's direction respecting costs will appear as the last paragraph in this court's opinion or order and will be headed "COSTS."

(d) The foregoing does not apply to appeals from decisions of the Boards of the Patent and Trademark Office. The clerk will not send forms for designation of costs to parties in such cases.